



Staff Report

INTRODUCTION OF AN ORDINANCE AMENDING MUNICIPAL CODE CHAPTER 8.5, CONTROL OF CAMPAIGN CONTRIBUTIONS

Honorable Mayor and Council Members:

Summary

Ordinance 755, enacted in 1986, establishes certain regulations pertaining to campaigns of individuals seeking election to office in Belmont (City Council, City Clerk, and City Treasurer). The ordinance has not been updated since then. Council discussed this matter in January and March of this year, and provided direction for amending the ordinance. In order for the new provisions to take effect, City Council must enact a new ordinance, which is presented herein.

Background/Discussion

Following the January discussion of an amended campaign ordinance, the City Council appointed a subcommittee (Wozniak/Dickenson) to work with staff to review various components of the existing ordinance, and to review ordinances provisions from other cities. During March's discussion by the full Council, direction was given to prepare a new ordinance that addresses the following changes:

1. Includes the goal of grass roots campaigning in the "purpose and intent" statement of any revised ordinance.
2. Caps anonymous contributions (annual accumulation)
3. \$250 limit on individual contributions
4. Prohibits all but individual contributions (i.e., no business or organization contributions)

Staff sought advice from legal staff at the Fair Political Practices Commission (FPPC) regarding the existing and proposed ordinance. In general, that advice concurs with the changes as proposed. Minor modifications were made based on updated information from the Commission, mostly notably was a change to allow contributions from sole proprietors, treating them the same as individual contributions.

General Plan/Vision Statement

No impact.

Fiscal Impact

No fiscal impact, other than minor publication costs for any new, modified, or repealed ordinance.

Public Contact

Posting of the agenda.

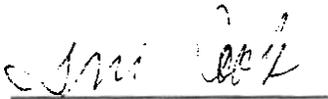
Recommendation

Staff recommends that Council introduce the Ordinance by title, waive further reading, and set the second reading and adoption for June 9, 2009. It should be noted that the ordinance would become effective thirty days from the second reading, or July 9, 2009, just prior to the November Municipal Election candidate filing period, which begins July 13, 2009.

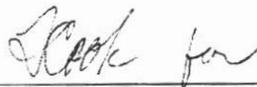
Attachments

- A. Proposed new ordinance, with deletions shown in struck-out text, and insertions shown in bold
- B. Correspondence to/from FPPC regarding legal advice rendered on proposed revised ordinance

Respectfully submitted,



Terri Cook
City Clerk



Marc Zafferano
City Attorney

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Chapter 8.5 CONTROL OF CAMPAIGN CONTRIBUTIONS*

***Editor's note:** Section 1 of Ord. No. 755, adopted Nov. 12, 1986, added ch. 25, which the editor has redesignated ch. 8.5 in order to maintain alphabetical sequence of chapter titles.

Sec. 8.5-1. Purpose and intent.

It is the intent of the city council of the City of Belmont in enacting this chapter to place realistic and enforceable limits on the amount which may be contributed to political campaigns in municipal elections, for the purpose of preventing potential improper or undue influence over elected officials by campaign contributions, **to encourage grass-roots campaigning**, and to ensure against election victories based primarily on the amount expended on campaigns.

This chapter is intended to supplement the Political Reform Act of 1974 **and as subsequently amended**; and in the event of a conflict between the act and this article, that act shall prevail. This chapter is enacted pursuant to article XI, section 17 of the Constitution of the State of California, and section ~~22808~~ **10102** of the California Elections Code.

This chapter shall not apply to contributions or other amounts given to a committee which is organized solely for the purpose of supporting or opposing the qualifications for the ballot or adoption of one or more City measures, **or for Recall elections.**

Sec. 8.5-2. Definitions.

Except for those terms specifically defined herein, the definitions set forth in sections 82000 et seq. of the California Government Code shall be applicable to the provisions and terms of this chapter.

(a) *Candidate* means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or make an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. ~~"Candidate" also includes any office holder who is the subject of a recall election.~~ An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Government Code section 84214.

(b) *Committee* means any person or combination of persons who directly or indirectly does any of the following:

- (1) Receives contributions for political purposes totaling ~~five hundred dollars (\$500.00)~~ **one thousand dollars (\$1,000)** or more in a calendar year;
- (2) Makes independent expenditures for political purposes totaling ~~five hundred dollars (\$500.00)~~ **one thousand dollars (\$1,000)** or more in a calendar year.

(c) *Contribution* means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made

for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

(1) The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fundraising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment and adequate consideration.

(2) The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(3) The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution. However, the fact that such amounts have been received shall be indicated in the appropriate campaign statement.

(4) The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500.00) or less.

(5) Notwithstanding the foregoing definition of "contribution," the term does not include the candidate's own money or property used on behalf of his or her candidacy, personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

(d) *Controlled committee* means a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee.

(e) Individual means a sole human being.

(e) *Organization* means any entity other than an individual as defined in subsection (e) above, ~~political action committee or controlled committee of a candidate, but includes~~ businesses (including sole proprietorships), and nonprofit corporations or unincorporated associations.

~~(f) *Political action committee* means any committee as defined in this chapter other than a controlled committee of a candidate.~~

Sec. 8.5-3. Campaign contributions by individuals.

No individual shall make, and no candidate shall receive from any individual, any contribution to the campaign of any individual candidate for any City of Belmont elective public office in excess of ~~one hundred dollars (\$100.00)~~ **two hundred fifty dollars (\$250)** in any calendar year.

Sec. 8.5-4. Campaign contributions by organizations.

No organization shall make, and no candidate shall receive from any organization, any contribution to the campaign of any individual candidate for any City of Belmont elective office. ~~in excess of two hundred dollars (\$200.00) in any calendar year~~

~~Sec. 8.5-5. Campaign contributions by political action committees.~~

~~No political action committee shall make, and no candidate shall receive from any political action committee, any contribution to the campaign of any individual candidate for any City of Belmont elective public office in excess of two hundred dollars (\$200.00) in any calendar year. No candidate may receive any contributions in excess of six hundred dollars (\$600.00) combined total contributions from political action committees in any calendar year.~~

Sec. 8.5-6. Contributions under assumed name.

No person shall make a contribution for any other person under an assumed name or under the name of any other person.

Sec. 8.5-7. ~~Anonymous contributions.~~ **Missing contributor information**

(a) Contributions, not to exceed a total of ~~fifty dollars (\$50.00)~~ **ninety-nine dollars (\$99)** from any one (1) person or source, are permitted to be retained by a candidate or any committee, including a committee supporting or opposing the passage of a measure, when received from anonymous sources or from persons who do not consent to having their name made known. Any such amount in excess of ~~fifty dollars (\$50.00)~~ **ninety-nine dollars (\$99)** shall be turned over to the finance director and deposited to the city's treasury.

(b) Accumulated contributions from anonymous sources may not exceed two hundred fifty dollars (\$250) in any calendar year.

(bc) Except as provided in subsection (a) above, no person shall knowingly accept any contribution in excess of ~~fifty dollars (\$50.00)~~ **one hundred (\$100)** without obtaining the name, address, ~~and occupation and employer's name~~ **and employer's name** of the person making the contribution. ~~For amounts of fifty dollars (\$50.00) or more, the employer's name must also be obtained for reporting purposes.~~

~~Sec. 8.5-8. Contributions by city contractors.~~

~~(a) No person who contracts with the city, either for the rendition of personal services or for the furnishing of any material, supplies or equipment to the city, or for selling any land or building to the city, directly or indirectly, shall make any contributions to a candidate or committee at any time between the commencement of negotiations for and during the completion of the performance under, or the termination of negotiations for, such contract or the furnishing of material, supplies, equipment, land or building, whichever occurs later.~~

~~(b) No candidate, agent for a candidate, committee or agent for a committee shall knowingly solicit any contribution from any person prohibited by subsection (a) of this subsection from making such a contribution.~~

Sec. 8.5-9. Business contributions:

If a contribution is received pursuant to section 8.5-3 from a person, other than an individual, and the person is controlled by an individual, either by controlling interest in stock, percentage of ownership, or directorship or voting rights, the contribution of that person shall be deemed the contribution of the controlling individual. The controlling individual shall not make any further contribution to a candidate or committee at any time thereafter. Any contribution from a person, other than an individual, shall identify all persons owning more than a ten (10) percent proprietary or voting interest in the person.

Sec. 8.5-10. Excess contributions.

The total contributions exceeding the maximum provided for in sections 8.5-3 through 8.5-9 **(these section citations numbers will change with the deletion of the above sections)** will be deposited in the general fund of the city, earmarked to be used for the purpose of defraying the costs of municipal elections.

Sec. 8.5-11. Statements generally.

(a) *Required.* Each candidate and each committee shall file as a public record with the city clerk four (4) sworn cumulative itemized reports showing the total amounts of contributions received and expenditures made with respect to such election. The required statements ~~may~~ **shall** be completed on campaign statement forms required to be filed by state law so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee chairperson that the candidate or committee has neither accepted nor solicited any campaign contribution in excess of the limitations of or in contravention of sections 8.5-3 through 8.5-9 inclusive **(these section numbers will be re-numbered due to changes above)**.

(b) *Contributions.* Each campaign statement shall show the total cumulative amount of contributions received during the period covered by the statement from persons who have given ~~fifty dollars (\$50.00)~~ **ninety-nine dollars (\$99.00) or less** and the total cumulative amount of contributions received during the period covered by the statement from persons who have given ~~a total of more than fifty dollars (\$50.00)~~. Each person who has contributed a total of ~~fifty dollars (\$50.00)~~ **one hundred dollars (\$100)** or more shall be listed by name, address, occupation, employer and amount contributed. ~~Each person contributing less than fifty dollars (\$50.00), and who has consented to publication shall be listed by name, address, occupation and employer. The total amount received from anonymous sources and from persons contributing fifty dollars (\$50.00) or less who have not consented to publication shall be listed. In the event that any portion of the contributions were received in connection with a fundraiser event, then the statement shall list the number of people in attendance, the gross receipts, the date and location of each event.~~

(c) *Expenditures Generally.* Each campaign statement shall show the total amount of expenditures made during the period covered by the statement.

(d) *Estimated Future Expenditures.* The campaign statement required to be filed by the candidate or committee upon the Friday next preceding the election date shall include, in addition to all other information required by this article, a statement of estimated additional expenditures which the candidate or committee chairperson reasonably expects to expend on or before the election date. There shall be no violation of this article if such estimate is unintentionally at variance with the amounts actually expended.

(e) *Times for Filing Generally.* Campaign statements required under this section shall be filed at the following times:

- (1) Between forty (40) and forty-five (45) days prior to the election, such statement to cover the period up to and including the forty-fifth day.
- (2) Between twelve (12) and seventeen (17) days prior to the election, such statement to cover the period up to and including the seventeenth day.
- (3) On the Friday preceding the election date to cover the period through the previous day.

(4) Between fifty-eight (58) and sixty-five (65) days following the election, such statement to cover the period through the fifty-eighth day following the election. **In the case of municipal elections held in June or November, the post-election statement delineated in this subsection shall correspond to the semi-annual statement due on January 31, to cover the period through December 31.**

Sec. 8.5-12. Declaration in lieu of campaign statement.

A candidate or committee need not file a campaign statement if the lawful receipts or expenditures do not exceed ~~two hundred dollars (\$200.00)~~; **one thousand dollars (\$1,000)** provided, that the candidate or committee chairperson shall file **with the city clerk** a written declaration **on the form prescribed by the Fair Political Practices Committee (FPPC) and provided by the City Clerk** ~~with the finance director~~ that to the best of his or her knowledge not more than ~~two hundred dollars (\$200.00)~~ **one thousand dollars (\$1,000)** has been received or expended on behalf of, in support of, or in opposition to a candidacy or measure, and that contributions have not exceeded those limitations established in this chapter.

Sec. 8.5-13. Suppliers of goods and services; disclosure of records required.

No person who supplies goods or services, or both goods and services, to a candidate or committee for use in connection with the campaign of the candidate or for or against a measure shall refuse knowingly to divulge or disclose to the enforcement authority his record of any expenditure made by the candidate or committee in payment for such goods or services, or both.

Sec. 8.5-14. Violations and penalties.

Any person who knowingly or willfully violates any provisions of this chapter is guilty of a misdemeanor. In addition to any other penalty provided by law, any willful or knowing failure to report applicable law shall be punishable by a fine of not less than five hundred dollars (\$500.00).

Sec. 8.5-15. Effect of violation on election.

(a) The election to office of any candidate who is convicted of a violation of any provision of this chapter shall be void, and such office shall become vacant immediately if the candidate is the incumbent or upon the date the candidate would otherwise have taken office. The vacancy shall be filled in the same manner as other vacancies in city offices are filled. If a candidate is convicted of a violation of this chapter prior to the time when the election is to take place, his or her candidacy shall be terminated immediately and he or she shall be ineligible for that election. Any person convicted of a violation of this chapter shall be ineligible to hold any office, whether elective or appointive, for a period of five (5) years for each such conviction from and after the date of conviction.

(b) The city clerk shall not issue any certificate of election to any candidate until the campaign statements required by section 8.5-12 or, if no campaign statement is required, the written declaration permitted by section 84212 of the California Government Code, have been filed in the form and at the place required by the Political Reform Act of 1974 as amended. The city council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in accordance with the provisions of this chapter.



FAIR POLITICAL PRACTICES COMMISSION

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May 19, 2009

Ms. Terri Cook
City Clerk
City of Belmont
One Twin Pines Lane
Belmont, California 94002

Re: **Your Request for Informal Assistance**
Our File No. I-09-108

Dear Ms. Cook:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Because your letter does not request advice with regard to a specific set of facts, we have treated your request as one for informal assistance.²

FACTS

The City of Belmont enacted an ordinance governing campaign contributions in 1986. It has never been reviewed or updated since that time. Your City Council desires to amend this ordinance. The City Council has given direction regarding a number of areas outlined in the ordinance. You have attached a draft ordinance for our review and comment. You have provided a marked-up copy so that we can see the existing ordinance and the proposed changes. Below are the highlights of the changes:

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

File No. I-09-108

Page No. 2

- Adding language denoting the desire for “grass roots” campaigning (specific Council direction)
- Changing thresholds for reporting requirements based on State levels
- Increasing individual contribution level from \$100 to \$250
- Eliminating all but individual contributions (i.e., no business, organization or PAC contributions)
- Other “cleanup” items

You would like us to review the Belmont ordinance for conformance with the Act. In addition, you have three specific questions about the treatment of contributions from minors, a cite to Elections Code 22808, and a requirement that the city clerk not issue a certificate of election until all campaign statements have been filed. We address these questions below.

ANALYSIS

Generally, the Act permits local governments to impose additional requirements relating to campaign finance and disclosure, so long as those requirements do not conflict with the Act. Section 81013 of the Act provides:

“Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title.”

However, the authority granted to local agencies is limited by Section 81009.5(b). That provision prohibits a local government agency from enacting any ordinance imposing filing requirements “additional to or different from” those set forth in Chapter 4 of the Act unless the additional or different filing requirements apply only to:

“[T]he candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification of, or passage of, a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.”

As expressly provided, the City of Belmont’s ordinance is intended to be a supplement to, and not conflict with, the Political Reform Act and its implementing regulations. City of Belmont Ordinance Sec. 8.5-1 provides, in part: “This chapter is intended to supplement the Political Reform Act of 1974 and as subsequently amended; and in the event of a conflict between the act and this article, that act shall prevail.”

File No. I-09-108

Page No. 3

We address your specific questions first:

1. *Is there any regulation regarding how contributions from minors are to be treated? In reviewing other cities' ordinances, some of them provide that those contributions are to be treated as if they came from their parents, and others are treated as separate contributions. Is this discretionary?*

The treatment of contributions by minors in local ordinances does vary. Some ordinances automatically attribute a minor's contribution to his or her parents or guardians and others treat them as separate contributions. The purpose of provisions attributing minors' contributions to their parents is to prevent circumvention of campaign contribution limits by routing contributions through minors. The Commission has in the past considered a Los Angeles ordinance which automatically attributed a minor's contribution to his or her parents or guardians, and concluded that the ordinance did not conflict with the Act because it was a permissible additional local contribution limitation. (*In re Pelham* (2001) 15 FPPC Ops. 1, copy enclosed.) In addition, the U.S. Supreme Court considered the issue of contributions by minors in *McConnell v. FEC*, 124 S.Ct. 619, 711 (2003), and invalidated a prohibition on contributions by minors aged 17 or younger contained in Section 318 of the Bipartisan Campaign Reform Act of 2002.³

It is discretionary whether to add a special provision concerning contributions from minors to your City's campaign ordinance. If the City of Belmont does not add a special provision concerning contributions from minors, the Act's provision on family contributions will govern. The Act contains a rebuttable presumption that a contribution made by a child under 18 years of age is a contribution from the parent or guardian of the child. Section 85308 provides:

“(a) Contributions made by a husband and wife may not be aggregated.

“(b) A contribution made by a child under 18 years of age is presumed to be a contribution from the parent or guardian of the child.”

2. *You are removing the citation to Elections Code Section 22808, as it appears this code section no longer exists. You are not sure what this section covered and would like us to confirm that this removal is appropriate.*

The entire Elections Code has been renumbered. Old Elections Code Section 22808 was renumbered to current Elections Code Section 10202. The section concerns limitations on contributions in municipal elections. Elections Code Section 10202 provides that: “[A] city may, by ordinance or resolution, limit campaign contributions in municipal elections.” You may wish to update this cite in the Belmont City ordinance, as it is still relevant authority for the City of Belmont's contribution limits ordinance.

³ Further discussion of contributions by minors is contained in the article “*Breaking the Piggy Bank: An Alternative Approach to Campaign Contributions by Minors After McConnell v. FEC.*” by Heather Davis, 73 Geo. Wash. L. Rev. 353 (2005).

File No. I-09-108

Page No. 4

The Act contains contribution limits for state candidates and committees, but not for local candidates. However, the Act also specifically permits cities and counties to enact contribution limits applicable to elections within their jurisdictions. Section 85703(a), copy enclosed, provides:

“Nothing in this act shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with the provisions of Section 85312.”⁴

3. *The very last section of the Belmont ordinance states that the city clerk is not to issue a certificate of election until all the statements have been filed. Is this legally enforceable? You notice that other cities include a similar clause.*

Section 8.5-15(b) of the ordinance provides as follows:

“(b) The city clerk shall not issue any certificate of election to any candidate until the campaign statements required by section 8.5-12 or, if no campaign statement is required the written declaration permitted by section 84212 of the California Government Code, have been filed in the form and at the place required by the Political Reform Act of 1974 as amended. The city council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in accordance with the provisions of this chapter.”

Enforcement of this provision is outside the scope of the Act. Your question about whether this provision is legally enforceable may be better directed to your City Attorney or District Attorney’s office, as they would be the agency enforcing the provision. However, this provision does not conflict with the Act and nothing in the Act would prevent its enforcement. This provision may have been derived from an old section of the Elections Code that used to contain a similar statute. Old Elections Code Section 4536, a 1957 law, provided that no elections officer is to issue a certificate of election to any person until his campaign statement is filed.⁵

⁴ Section 85312 establishes the member communications exception to contributions and independent expenditures, providing that: “. . . payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards and newspaper advertisements.” Pursuant to Section 85703, local jurisdictions with ordinances that impose contribution limitations or prohibitions in connection with local elections must also provide for this exception in some fashion.

⁵ A 1957 Attorney General Opinion discussing this section concluded that the statutory prohibition against issuing election certificates to candidates who have not yet filed campaign statements

File No. I-09-108

Page No. 5

We note that the reference to Section 84212 of the Act in Section 8.5-15(b) of the Belmont ordinance is outdated. That section was formerly titled "Candidates who receive and spend \$200 or Less" but was amended by Stats. 1985, Ch. 1456, and now covers the reporting of loans. The appropriate reference is Section 84206, copy enclosed, concerning a short form for filing reports for candidates or officeholders who receive contributions or make expenditures of less than \$1,000 in a calendar year.

We have the following additional comments on the draft ordinance:

4. *Eliminating all but Individual Contributions.* The draft ordinance proposes eliminating contributions by businesses, organizations and PACs. The draft showing changes provides:

"Sec. 8.5-3. Campaign contributions by individuals.

"No individual shall make, and no candidate shall receive from any individual, any contribution to the campaign of any individual candidate for any City of Belmont elective public office in excess of ~~one hundred dollars (\$100.00)~~ two hundred fifty dollars (\$250) in any calendar year.

"Sec. 8.5-4. Campaign contributions by organizations, businesses, and political action committees.

"No organization⁶ shall make, and no candidate shall receive from any organization, business, or political action committee any contribution to the campaign of any individual candidate for any City of Belmont elective office ~~in excess of two hundred dollars (\$200.00) in any calendar year.~~

~~"Sec. 8.5-5. Campaign contributions by political action committees.~~

~~"No political action committee shall make, and no candidate shall receive from any political action committee, any contribution to the campaign of any individual candidate for any City of Belmont elective public office in excess of two hundred dollars (\$200.00) in any calendar year. No candidate may receive any contributions in excess of six hundred dollars (\$600.00) combined total contributions from political action committees in any calendar year."~~

overrides statutory direction to issue election certificates on the Tuesday after the election, and consequently a successful municipal candidate who files his campaign statement after the date of the official canvass may receive his certificate of election and take office after the campaign statement is filed. (30 Ops. Atty. Gen. 354, copy enclosed.)

⁶ Under the draft ordinance, "organization" excludes PACs; the term is defined to mean "any entity other than an individual, political action committee or controlled committee of a candidate, but includes businesses (including sole proprietorships), and nonprofit corporations or unincorporated associations."

File No. I-09-108

Page No. 6

The Belmont ordinance currently contains an aggregate limit on contributions by political action committees ("PACs") to a candidate in Section 8.5-5. Aggregate limits on contributions by PACs to a candidate have been upheld in several cases, including, *Montana Right to Life Association v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003); and, in another jurisdiction, *Gard v. Wisconsin State Elections Bd.*, 156 Wis. 2d 28, 456 N.W.2d 809, 820 (Wis. 1990).

The draft ordinance strikes out the aggregate limit on contributions from PACs to candidates of \$600 per year, and the limit on contributions from organizations to candidates of \$200 per year, and proposes a ban on these contributions. The draft ordinance would permit contributions to city candidates from individuals only, and bar contributions to city candidates from organizations, businesses, political action committees and political parties.

Many jurisdictions do specify the permissible kinds of donors to candidate's campaigns.⁷ However, campaign contribution laws enacting source restrictions such as these raise freedom of speech and associational issues under the First and Fourteenth Amendments. The only source restriction on contributions that has been directly upheld by the Supreme Court is a prohibition on contributions to candidates from the general treasuries of corporations. Most recently, *FEC v. Beaumont*, 539 U.S. 146 (2003), copy enclosed, upheld the federal ban on corporate contributions to candidates even as applied to nonprofit corporations. In *Beaumont*, the Court found that the ban on corporate contributions was only a marginal speech restriction which was closely drawn to match the significant public interest in preventing undue corporate influence over the political process. In addition, the Court observed that the corporation could still make indirect contributions through its political action committee, and the corporation's members could make direct contributions as individuals.

5. *Forfeiture of Office for Conviction of Violation of Ordinance.*

Section 8.5-15 of the Belmont ordinance provides in part that: "(a) The election to office of any candidate who is convicted of a violation of any provision of this chapter shall be void, and such office shall become vacant immediately if the candidate is the incumbent or upon the date the candidate would otherwise have taken office. . . ."

This provision presumably applies only in the case of a candidate convicted of a serious misdemeanor offense under the ordinance. Forfeiture of office statutes are discussed in the two enclosed legal encyclopedia excerpts. (Am Jur 2d Public Officers and Employees Sections 166 and 184, copies enclosed.) In such statutes, the crime or offense must be closely related to the employment and be of sufficient gravity to merit the harsh penalty of forfeiture of office.

⁷ A discussion of source restrictions that may be of assistance is contained in Writing Reform, by Deborah Goldberg, Chapter III, copy enclosed.

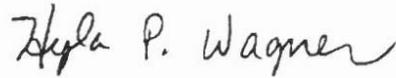
File No. I-09-108

Page No. 7

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in black ink that reads "Hyla P. Wagner". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline.

By: Hyla P. Wagner
Senior Counsel, Legal Division

Enclosures

HPW:jgl